

HOUSE No. 4497

The Commonwealth of Massachusetts

By Mr. Speliotis of Danvers, for the committee on Consumer Protection and Professional Licensure, on Senate, No. 176 and House, No. 317, a Bill regulating the direct shipment of wine (House, No. 4497). February 16, 2010.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act regulating the direct shipment of wine.

FOR THE COMMITTEE

NAME:

Theodore C. Speliotis

DISTRICT/ADDRESS:

13th Essex

The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

1 An Act regulating the direct shipment of wine.

2
3 *Whereas*, The deferred operation for this act would tend to defeat its purpose, which is forthwith
4 to make to authorize the direct shipment of wine, therefore it is hereby declared to be an
5 emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

6 SECTION 1. Section 1 of chapter 138 of the General Laws, as appearing in the 2006 Official
7 Edition, is hereby amended by inserting after the definition of “Alcoholic beverages” the
8 following definition:-

9 “Alcoholic beverages expert”, an individual who is recognized for their written contributions
10 evaluating alcoholic beverages in trade publications, newspapers, magazines, websites,
11 newsletters, and other media for public distribution.

12 SECTION 2. Section 19B of Chapter 138, as appearing in the 2008 official edition, is hereby
13 amended by striking out in line 1 of paragraph (a) the words “ For the purposes of encouraging
14 the development of domestic vineyards, the commission shall” , and insert in place thereof the
15 following words: “The commission shall”

16 SECTION 3. Chapter 138 of the General Laws, as so appearing, is hereby amended by striking
17 section 19F and inserting in place thereof the following section:-

18 Section 19F. (a) Notwithstanding any general or special law to the contrary, an applicant that is
19 currently licensed in the Commonwealth, or any other state, to manufacture, export and sell
20 wine, who obtains a direct shipment license pursuant to this section, may sell and ship wine
21 directly to a resident of the Commonwealth, who is at least 21 years of age, for such resident’s
22 personal use, and not for resale.

(b) The commission may issue a direct shipment license to an applicant who: (1) Is authorized by their home state licensing authority to manufacture, export and sell wine; (2) Files an application with the commission; and (3) Pays an annual license fee per winery.

(c) The annual license fee for a license issued under this section shall be \$100.00 per winery; provided that an affiliate, franchise, or subsidiary thereof shall require a separate license. The applicant shall provide the commission and the department of revenue with a true copy of the applicable alcoholic beverage license to manufacture, export and sell its wine as issued by the appropriate licensing authority. A copy of the wine shipment license obtained under this section shall be sent by the commission to the department of revenue to be kept on file.

(d) A person licensed under this section shall ship wine in accordance with section 22.

(e) A licensee, licensed under this section, may ship not more than 4 cases (no more than 10 liters each case) per year of wine to a resident located within the Commonwealth.

(f) A person licensed under this section shall: (i) report monthly to the commission and the department of revenue the total number of gallons of wine shipped into the commonwealth for the preceding month; (ii) pay to the department of revenue, under the department's rules and regulations, all taxes due, the amount of such taxes to be calculated as if the sale were at the location where the delivery is made; provided, however, that the licensee shall pay, for each shipment of wine, the excise levied on importations of wine calculated under section 21 and any and all other applicable taxes, including sales tax; and (iii) upon request, allow the commission or the department of revenue to perform an audit of the licensee's records.

(g) No person shall direct ship wine to consumers without a license to sell and ship wine. A person who manufactures, transports, imports, exports or receives wine in violation of this chapter shall be deemed to have engaged in a deceptive act or practice under chapter 93A. The commission shall enforce the requirements of this section, by administrative proceedings, against a licensee who ships wine in violation of this section as follows: for a first violation, by a fine of \$1000; for a second violation, a fine of \$2000; for a third violation within one calendar year, by a prohibition of the winery from making any direct shipment of wine under this section, by a fine of up to \$10,000, or both; provided that after 1 year, the winery may reapply for the authority to directly ship wine under this section.

If a violation of this section involves a sale or delivery to a person under 21 years of age, a first offense may a fine of \$1000; for a second violation, a fine of \$2000; for a third violation within one calendar year, by a prohibition of the winery from making any direct shipment of wine under this section, by a fine of up to \$10,000, or both; provided that after 1 year, the winery may reapply for the authority to directly ship wine under this section. Nothing in this clause shall preclude punishment under section 34.

(h) The commission may promulgate rules and regulations to effectuate the purposes of this law in accordance with its powers under chapter 138, Sec 24. The department of revenue may promulgate rules and regulations necessary to effectuate the tax oversight, collection and enforcement provisions of the General Laws as they relate to this section.

(i) The commission shall issue an annual report to the house and senate committees on ways and means and the joint committee on consumer protection and professional licensure, which shall include, but not limited to, a determination of direct shipment licenses issued, a review of violations and enforcement measures under this section and an analysis of the need for changes in the law and regulations relative thereto.

SECTION 4. Said section 22 of said chapter 138, as so appearing, is hereby further amended by striking paragraph 9 and inserting in place thereof the following paragraph:-

Notwithstanding any other provision of this section, any individual, partnership, or corporation, regularly and lawfully conducting a parcel delivery service, or a general express or trucking business, or regularly and lawfully engaged in the business of leasing trucks for hire, with or without drivers, may transport and deliver the products sold at retail by licensees under section 19F, farmer-winery licensees under 19B, or farmer-brewery licensees under section 19E, to the ultimate consumers of such products pursuant to this section. Licensees under sections 19F and 19E shall ensure that the outside of each parcel transported or delivered under this section shall be clearly labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY." Receipts for delivery of such parcels shall contain a check box next to the recipient's signature where the recipient shall certify that he or she is not under 21 years of age and a check box where the delivery person shall certify that a valid form of photographic identification showing that the recipient is not under 21 years of age was presented by the recipient upon delivery. Notwithstanding the foregoing, a delivery company may use an electronic device to receive the signature of a person accepting delivery of a parcel under this section and to certify that the person has displayed a valid identification as so required.

SECTION 5. Section 22A of chapter 138 of the General Laws, as so appearing, is hereby amended by inserting after the second paragraph the following two paragraphs:-

(1) Upon payment of annual fee of \$100.00, the commission may grant to an alcoholic beverages expert a permit which shall authorize such individual to accept delivery of alcoholic beverages from a licensee under this chapter. These beverages, known as samples, are acquired otherwise than by purchase and are not intended for sale. The holder of a permit issued under this section shall use the samples obtained for the express purpose of evaluation and analysis related to consumer consumption of an item having a brand name. The permit shall allow for the delivery of the samples to the premises where the research is to be conducted.

(2) Before an individual may qualify as an expert under this section, the individual shall submit credentials, with their initial application fee, to be approved by the commission.

SECTION 6. This act shall take effect upon its passage.